THE HONOUABLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.21846 of 2004

Between:

Challa Srinivasa Rao. ..
PETITIONER

and

The Executive Engineer,
Irrigation Division,
Ongole, and others.
..
RESPONDENTS

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ORDER:

This writ petition is filed seeking Mandamus declaring proceedings of the 1st respondent, dated 26-10-2004, in letter No.DBD2/Manneru Causeway/909M, as arbitrary and illegal and consequently to direct the respondents to obtain No Objection Certificate from the railway authorities immediately and entrust the site to the petitioner to enable him to complete the work in time.

According to the petitioner, he is a Special Class Contractor. The 2nd respondent issued tender notice, dated 12-09-2003, inviting tenders for the work "Repairs to the damaged cause way across Manneru river near railway bridge in Singarayakonda village, Prakasham District". The estimated cost of the work was Rs.49,55,000/-. The last date for receipt of tenders was 23-09-2003. In pursuance of the above tender notice, the petitioner quoted 32% less than the estimated value and the respondents have allotted the work to him and he also entered into an agreement with them on 06-11-2003. However, after entering into an agreement, no steps were taken to provide all the infrastructure for commencing the work. Therefore, the department was waiting for taking all clearances from the railway authorities since the work place was located nearer to the railway bridge. Though months have passed, the respondents have not obtained any No Objection Certificate nor handed over the site to the petitioner for commencing the work. In fact, on 07-02-2004, a letter was addressed to the petitioner by the Assistant Divisional Engineer, South Central Railway, Ongole, stating that the proposed new bridge is very nearer to the cause way, as such, the railway authorities

requested the petitioner not to take up any work on the cause way without provisional approval of railways and thereafter the petitioner's contract was terminated on 26-10-2004. Hence, this writ petition.

A detailed counter affidavit is filed by the Government stating that it is not its fault and it is the fault of the petitioner in not commencing the work.

Absolutely, there is no documentary evidence to show that the petitioner was communicated with any letter asking him to commence the work. In fact, the railways had cleared the matter only on 09-11-2004. May be, on an earlier occasion, the railways also expressed no objection for carrying out the work, but the petitioner was not asked to commence the work as per the directions of the railways. Ultimately, the railways sent communication on 09-11-2004 expressing its willingness to commence the work near the cause way only on 09-11-2004 i.e., much after the cancellation of the contract of the petitioner, dated 26-10-2004. All these things would go show that there was no serious lapse on the part of the petitioner to punish him with the cancellation of the contract.

Therefore, I am of the opinion that the respondents hastily cancelled the contract on 26-10-2004 without there being any clearance from the railway authorities, for no fault of the petitioner. Since the railways had cleared the matter only on 09-11-2004, the cancellation of the contract on 26-10-2004 is arbitrary and illegal and it is liable to be set aside.

Therefore, the writ petition is allowed setting aside the proceedings of the 1st respondent, dated 26-10-2004, and the respondents are directed to handover the site to the petitioner forthwith, as per the agreement.

If for any reason, the respondents felt that there is no necessity of carrying out the contract work as per the agreement, they are at

liberty to return the E.M.D. and other deposited amounts along with the tender to the petitioner. There shall be no order as to costs.

13-07-2006

Prv